



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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OFFICE OF
WATER AND WATERSHEDS

Ms. Heather Bartlett
Water Quality Program Manager
Washington Department of Ecology
PO Box 47600
Olympia, Washington 98504-7600

Re: EPA Final Action on the *Deschutes River, Percival Creek, and Budd Inlet Tributaries Multi-parameter Total Maximum Daily Load*

Dear Ms. Bartlett:

The U.S. Environmental Protection Agency has completed its Clean Water Act ("CWA") review of the *Deschutes River, Percival Creek, and Budd Inlet Tributaries Multi-parameter Total Maximum Daily Load* ("Deschutes TMDL") that the Washington Department of Ecology ("Ecology") submitted on December 17, 2015. The Deschutes TMDL addresses impairments for temperature, dissolved oxygen ("DO"), pH, fecal coliform bacteria, and fine sediment at 73 water segments, for a total of 73 waterbody-pollutant pairs (i.e., 73 individual TMDLs). EPA's review also includes Ecology's July 17, 2017 letter to EPA ("2017 submittal"), which supplemented the 2015 TMDL submittal by providing new calculations for bacteria and clarifications for temperature. EPA's final action on the TMDL is described in this letter. A summary table of each waterbody-pollutant pair, as well as EPA's final action and corresponding rationale, is included in the enclosure.

EPA is approving 26 of the submitted TMDLs for temperature. These TMDLs meet the statutory and regulatory requirements found in section 303(d) of the CWA and EPA's implementing regulations at 40 C.F.R. Part 130. EPA's review indicates that these allocations have been established at levels that, when fully implemented, will lead to the attainment of applicable water quality standards. Therefore, Ecology does not need to include these waters on the next 303(d) list of impaired waters for the applicable parameter.

EPA finds that 14 of the bacteria TMDLs are established at levels that will attain applicable water quality standards, and they satisfy the majority of the requirements of section 303(d) of the CWA and EPA's implementing regulations. However, these TMDLs are based in part on new calculations provided in the 2017 submittal, which have not yet undergone public review as required by 40 C.F.R. § 130.7(c)(1)(ii). EPA is therefore disapproving these bacteria TMDLs because they require additional public review.

EPA is disapproving 23 additional TMDLs. These include TMDLs developed for temperature, DO, pH, fine sediment, and bacteria. According to our review, these TMDLs fail to meet the statutory and regulatory requirements found in section 303(d) of the CWA and EPA's implementing regulations. The primary deficiencies are summarized as follows:

- Incomplete TMDL submittals: Some waterbody-pollutant pairs lack critical TMDL components (e.g., loading capacity, wasteload allocations, and load allocations), as required by 40 C.F.R. §§ 130.2 and 130.7.
- Downstream uses not protected: Washington's water quality standards at WAC 173-201A-260(3)(b-d) require that downstream uses be protected. Some waterbody-pollutant pair TMDL calculations allow pollutant loadings that are not protective of downstream waters. Thus, they are not consistent with requirements at 40 C.F.R. § 130.7(c)(1) that TMDLs be established at levels necessary to attain and maintain the applicable water quality standards.
- TMDL target not protective of water quality standards: Some waterbody-pollutant pair TMDL calculations do not provide a clear linkage analysis to demonstrate that the water quality target chosen to develop the loading capacity is protective of state water quality standards. Thus, they are not consistent with requirements at 40 C.F.R. § 130.7(c)(1) that TMDLs be established at levels necessary to attain and maintain the applicable water quality standards.

Finally, EPA is not taking action on ten TMDLs submitted for bacteria because they were prepared for ten segments that no longer require bacteria TMDLs. These segments, previously identified as impaired for bacteria on the EPA-approved 2010 303(d) list, were included in the 2015 TMDL submittal. Following Ecology's submission of the Deschutes TMDL in 2015, EPA approved the delisting of these ten segments based on Ecology's revised Integrated Report. These delistings were included in EPA's approval of the 2012 303(d) list on July 22, 2016. Placement of the ten segments in Categories 1 and 2 of the Integrated Report indicates they are no longer impaired for bacteria and, thus, no longer require a TMDL. Therefore, EPA has determined it is not required to approve or disapprove these bacteria TMDLs.

In summary, EPA is taking the following actions on the Deschutes TMDL:

- Approval of 26 TMDLs for temperature.
- Disapproval of 14 TMDLs for bacteria (approvable upon completion of public participation process).
- Disapproval of 23 TMDLs for temperature, DO, pH, fine sediment, and bacteria.

EPA values our working relationship with Ecology, and we appreciate the continued cooperation offered by the State as we work towards the common goal of addressing impaired waters in the State of Washington. By EPA's final action, the approved TMDLs are now incorporated into the State's Water Quality Management Plan under section 303(e) of the CWA.

EPA is committed to working with Ecology to expedite the public notice process for the bacteria TMDLs deficient in that requirement. EPA is also committed to completing the work necessary to replace the remaining 23 TMDLs for temperature, DO, pH, fine sediment, and bacteria, which the Agency is disapproving through this action. The replacement TMDLs will require technically complex modeling, and the TMDL development process will involve stakeholder review and input. Thus, our interim goal is to have a revised draft TMDL completed by March 2019. The Agency plans to make a good-faith effort to meet this goal. Additionally, EPA is aware of a concurrent ongoing effort to establish a fish hatchery which would likely discharge to the Deschutes River. We plan to work with Ecology to ensure the replacement TMDLs consider the needs of the hatchery, including allocations and timing.

If you have any comments or questions on this Agency action, please feel free to call me at (206) 553-1855, or you may call Miranda Hodgkiss of my staff at (206) 553-0692.

Sincerely,

Daniel D. Opalski, Director
Office of Water and Watersheds

Enclosure

cc: Mr. Andrew Kolosseus, Ecology